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MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1977

**No. 77-914**

THE CITY OF INDEPENDENCE, MISSOURI, LYLE  
W. ALBERG, CITY MANAGER, RICHARD A. KING,  
MAYOR, CHARLES E. CORNELL, DR. RAY WIL-  
LIAMSON, DR. DUANE HOLDER, RAY A. HEADY,  
MITZI A. OVERMAN, AND E. LEE COMER, JR.,  
MEMBERS OF THE COUNCIL OF THE CITY OF  
INDEPENDENCE, MISSOURI,

*Petitioners,*

vs.

GEORGE D. OWEN,

*Respondent.*

## **SUPPLEMENTAL BRIEF FOR RESPONDENT IN OPPOSITION**

**On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit**

IRVING ACHTENRERG

DAVID ACHTENBERG

Ozark National Life Building

Suite 700, 906 Grand

Kansas City, Missouri 64106

*Attorneys for Respondent*

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## SUPPLEMENTAL BRIEF FOR RESPONDENT IN OPPOSITION

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### On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

This Court's decision in *Monell v. Department of Social Services*, 46 U.S.L.W. 4569 (U.S. June 6, 1978) provides additional reasons why the petition should be denied.

### The Court of Appeals Found Liability Due to Official Acts of the City Through Its Highest Officials

In a routine application of *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Court of Appeals held the City of Independence liable for its refusal to grant its employee, George Owen, a hearing in which he could have cleared

his name of the stigma imposed in the course of the termination of his employment. The Court held that the stigma had been imposed by the acts of the city council and city manager. In a council-manager form of government, these are certainly officials "whose edicts or acts may fairly be said to represent official policy . . . ." *Monell v. Department of Social Services, supra*, at 4579.

Petitioners continue to argue erroneously that the decision below imposed liability on the city solely for the act of a single councilman. (Petitioners' Supplemental Memorandum, p. 2) This clearly was not the finding or holding of the Court of Appeals. (See Brief for Respondent in Opposition, pp. 2-3) The Court of Appeals found that the stigmatizing charges and motion were made by a city councilman in a public city council meeting. The motion was that investigative reports be turned over to the prosecutor for presentation to the grand jury, that they be released to the press and that the city manager take "direct and appropriate action against those involved in illegal, wrongful or grossly inefficient activities." The motion was passed by a formal vote of the city council. (App. 22a)\* The full text of the statement and motion appear in the petition at pp. 3-4, n.1. The Court of Appeals found that the charges were "obviously derogatory and stigmatizing" (App. 18a), and that they "impugn[ed] Owen's honesty and integrity." (App. at 22a) The allegations were far from "frolicsome." The following day, the city manager discharged Owen and reinforced the implication of wrongdoing by publicly announcing that he was turning the matter over to the prosecutor for submission to the grand jury. (App. 22a at n.11) See also, Brief for Respondent in Opposition at 2-4 and 6-7.

\*References (App. ....) are to Appendix A of the Petition for Certiorari. The Appendix is the opinion of the Court of Appeals.

### **The Court Applied the Distinction Between Acts of Minor Employees and Those of Policymakers**

Since the Court of Appeals found that the city and its highest officials could be sued under 28 U.S.C. §1331 and the Fourteenth Amendment, it deferred ruling on whether city officials, in their official capacities, could also be sued under 42 U.S.C. §1983 and 28 U.S.C. §1343.

However, the Court expressly recognized and applied the distinction between acts of minor employees and those of high ranking policymakers. The Court said:

"We do not intend to imply that municipalities are monetarily liable for each and every constitutional violation committed by their agents. For example, cases . . . which refused to hold cities liable on a *Bivens* theory for brutality, false arrest and imprisonment, and unlawful search and seizure committed by individual police officers, absent proof that the cities' policymaking agencies or officials knowingly encouraged or tolerated such conduct, involve considerations of vicarious liability not present in this case where the conduct of the city's highest ranking officials allegedly resulted in the constitutional violation." (App. 16a, n.9)

Therefore, under *Monell v. Department of Social Services, supra*, the petition should be denied.

Respectfully submitted,

IRVING ACHTENBERG

DAVID ACHTENBERG

Ozark National Life Building

Suite 700, 906 Grand

Kansas City, Missouri 64106

*Attorneys for Respondent*